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INTERSTATE COMMERCE COMMISSION

UNION TANK CAR COMPANY

EQUIPMENT TRUST

(Series P-1)

Equipment Trust Agreement

Dated as of April 1, 1974

by and between

THE FIRST NATIONAL BANK OF CHICAGO, Trustee

and

UNION TANK CAR COMPANY

TABLE OF CONTENTS*

	PAGE
PARTIES	1
RECITALS.....	1
FORMS	2
CONSIDERATION FOR AGREEMENT.....	5

ARTICLE ONE

DEFINITIONS

SECTION 1.01.	Definitions	5
	Affiliate	5
	Board of Directors.....	6
	Company	6
	Corporate Trust Office	6
	Cost.....	6
	Deposited Cash	6
	Engineer's Certificate	6
	Equipment	6
	Event of Default	6
	holder	6
	Independent Engineer	7
	Interest Payment Date	7
	Investment Securities	7
	Officers' Certificate	7
	Opinion of Counsel	7
	Overdue Interest Rate	8
	Outstanding Indebtedness	8
	principal.....	8
	Prepayment Amount.....	8
	Request.....	8
	Responsible Officer	8
	Trust Certificates	9
	Trust Equipment	9
	Trustee	9
	herein, hereof, hereby, hereto, hereunder	9

* This Table of Contents does not constitute a part of the Agreement.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

	PAGE
SECTION 2.01. Issuance of Trust Certificates	9
SECTION 2.02. Interests Represented by Trust Certificates; Interest; Instalment Payments.....	9
SECTION 2.03. Forms of Trust Certificates and Guaranty.....	10
SECTION 2.04. Execution by Trustee	10
SECTION 2.05. Characteristics of Trust Certificates	10
SECTION 2.06. Replacement of Lost Trust Certificates.....	12

ARTICLE THREE

PREPAYMENT OF TRUST CERTIFICATES

SECTION 3.01. Right of Prepayment and Prepayment Price.....	12
SECTION 3.02. Procedure for Prepayment; Notice of Prepayment.....	13
SECTION 3.03. Payment Becomes Due.....	14

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. Acquisition of Equipment by Trustee	14
SECTION 4.02. Payment of Deposited Cash.....	15
SECTION 4.03. Payment of Deficiency.....	15
SECTION 4.04. Supporting Papers	15

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. Lease of Trust Equipment	17
SECTION 5.02. Equipment Automatically Subjected	17
SECTION 5.03. Additional and Substituted Equipment Subject Hereto.....	17

	PAGE
SECTION 5.04. Rental Payments.....	18
SECTION 5.05. Termination of Lease	20
SECTION 5.06. Substitution and Replacement of Equipment.....	20
SECTION 5.07. Marking of Trust Equipment	24
SECTION 5.08. Maintenance of Trust Equipment	25
SECTION 5.09. Possession of Trust Equipment	26
SECTION 5.10. Patent Indemnity	28

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. Events of Default.....	28
SECTION 6.02. Remedies	31
SECTION 6.03. Application of Proceeds	33
SECTION 6.04. Waivers of Default	33
SECTION 6.05. Obligations of Company Not Affected by Remedies.....	34
SECTION 6.06. Company to Deliver Trust Equipment to Trustee.....	34
SECTION 6.07. Trustee to Give Notice of Default, but May Withhold Under Certain Circumstances	35
SECTION 6.08. Limitations on Suits by Holders of Trust Certificates.....	35
SECTION 6.09. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest.....	36
SECTION 6.10. Control by Holders of Trust Certificates.....	36
SECTION 6.11. Right of Court to Require Filing of Undertaking to Pay Costs	37
SECTION 6.12. Remedies Cumulative	37

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. Guaranty of Company.....	37
SECTION 7.02. Discharge of Liens.....	38
SECTION 7.03. Payment of Expenses; Recording	38
SECTION 7.04. Further Assurances	40

ARTICLE EIGHT

THE TRUSTEE

	PAGE
SECTION 8.01. Acceptance of Trusts	40
SECTION 8.02. Duties and Responsibilities of the Trustee; During Default; Prior to Default.....	40
SECTION 8.03. Certain Rights of the Trustee	41
SECTION 8.04. Application of Rentals; Responsibility of Trustee to Insure or Record	42
SECTION 8.05. Funds May be Held by Trustee; Investments in Investment Securities	42
SECTION 8.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties By Agents; Reimbursement of Expenses; Holding of Trust Certifi- cates; Moneys Held in Trust.....	43
SECTION 8.07. Persons Eligible for Appointment as Trustee	44
SECTION 8.08. Resignation and Removal; Appointment of Successor Trustee.....	45
SECTION 8.09. Acceptance of Appointment by Successor Trustee.....	46
SECTION 8.10. Merger or Consolidation of Trustee.....	47
SECTION 8.11. Appointment of Co-Trustees or Separate Trustees	47

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. Evidence of Action Taken by Holders of Trust Certificates....	49
SECTION 9.02. Proof of Execution of Instruments and of Holding of Trust Certificates.....	49
SECTION 9.03. Trust Certificates Owned by Company Deemed Not Out- standing.....	50
SECTION 9.04. Right of Revocation of Action Taken.....	50

ARTICLE TEN

SUPPLEMENTAL AGREEMENTS

	PAGE
SECTION 10.01. Supplemental Agreements without Consent of Holders	51
SECTION 10.02. Supplemental Agreements with Consent of Holders	52
SECTION 10.03. Effect of Supplemental Agreements.....	53
SECTION 10.04. Reference in Trust Certificates to Supplemental Agreements	53
SECTION 10.05. Opinion of Counsel to the Trustee	54

ARTICLE ELEVEN

MISCELLANEOUS

SECTION 11.01. Rights Confined to Parties and Holders	54
SECTION 11.02. No Recourse	54
SECTION 11.03. Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein.....	55
SECTION 11.04. Binding Upon Assigns	55
SECTION 11.05. Notices	55
SECTION 11.06. Effect of Headings.....	56
SECTION 11.07. Counterparts	56
SECTION 11.08. Date Executed.....	56
SECTION 11.09. Governing Law	56
TESTIMONIUM.....	57
SIGNATURES AND SEALS.....	57
ACKNOWLEDGMENTS	58
SCHEDULE A. DESCRIPTION OF TRUST EQUIPMENT	59

EQUIPMENT TRUST AGREEMENT dated as of April 1, 1974, by and between THE FIRST NATIONAL BANK OF CHICAGO, a national banking association, as Trustee (hereinafter called the Trustee), and UNION TANK CAR COMPANY, a corporation duly organized and existing under the laws of the State of Delaware (hereinafter called the Company).

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder until title is transferred under the provisions hereof; and

WHEREAS, Union Tank Car Company Equipment Trust Certificates due October 15, 1989 (Series P-1) (hereinafter called Trust Certificates), are to be issued and sold in an aggregate principal amount not exceeding \$6,187,500, and the net proceeds of such sale together with such other cash, if any, as may be required to be deposited by the Company as hereinafter provided is to constitute a fund equal to the aggregate principal amount of Trust Certificates so issued and sold, to be known as UNION TANK CAR COMPANY EQUIPMENT TRUST (Series P-1), to be applied by the Trustee from time to time in part payment of the Cost of the Trust Equipment, the remainder of the Cost thereof to be paid out of advance rentals to be paid by the Company as provided herein; and

WHEREAS, the texts of the Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company are to be substantially in the following forms, respectively:

[FORM OF TRUST CERTIFICATE]

THE REGISTERED HOLDER HEREOF HAS REPRESENTED THAT IT HAS ACQUIRED THIS CERTIFICATE FOR INVESTMENT AND NOT FOR RESALE. ACCORDINGLY, THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND MAY NOT BE SOLD, TRANSFERRED, PLEDGED OR HYPOTHECATED UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE.

No.

\$

UNION TANK CAR COMPANY

8½% EQUIPMENT TRUST CERTIFICATE

DUE OCTOBER 15, 1989

(SERIES P-1)

Total Authorized Issue \$6,187,500

THE FIRST NATIONAL BANK OF CHICAGO,
TRUSTEE

THE FIRST NATIONAL BANK OF CHICAGO, as Trustee (hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of April 1, 1974, by and between the Trustee and UNION TANK CAR COMPANY, a Delaware corporation (hereinafter called the Company), hereby certifies that
or registered assigns is entitled to an interest of

Dollars in Union Tank Car Company Equipment Trust (Series P-1), payable in instalments as hereinafter provided, and to interest thereon on the unpaid principal hereof from the date hereof until the final instalment of the unpaid balance of the principal hereof shall have become due on October 15, 1989, payable on October 15 and April 15 in each year, beginning October 15, 1974, at the rate per annum specified in the heading hereof, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of 9½% per annum; principal and interest being payable to the registered holder hereof at said office of the Trustee at its Corporate Trust Office in Chicago, Illinois, in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other moneys received by the Trustee and applicable to such payment under the provisions of the Agreement. The principal amount

of this Certificate is payable in 30 semiannual instalments on October 15 and April 15 of each year, commencing April 15, 1975, calculated so that the aggregate of principal and interest payments payable on such dates shall be substantially equal and such instalments of principal shall completely amortize the principal amount of this Certificate. *Since partial payments of principal on this Certificate are not required to be noted on this Certificate, inquiries should be made at said office of the Trustee as to the principal amount at any time remaining unpaid hereon.*

This Certificate is one of an authorized issue of Trust Certificates in an aggregate principal amount not exceeding \$6,187,500, issued or to be issued under the Agreement, under which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued thereunder. Reference is made to the Agreement and the Schedules thereto (copies of which are on file with the Trustee at its said office) for a more complete statement of the terms and provisions thereof, to all of which the registered holder hereof, by accepting this Certificate, assents.

As more fully provided in the Agreement, the Trust Certificates are also prepayable during the 12-month period commencing April 1 in each of the years 1979, 1980 and 1981 in principal amounts of not more than the amounts specified in Article Three of the Agreement for each such period, at the option, subject to the terms of the Agreement, of the Company on not less than 30 days prior notice given as provided in the Agreement, at their principal amount plus the following prepayment premiums (expressed in percentages of unpaid principal being prepaid) together with, in each case, accrued and unpaid interest to the date fixed for prepayment:

<u>If Prepaid During 12-Month Period Commencing April 1</u>	<u>Optional Prepayment Premium</u>
1979	5.750%
1980	5.175%
1981	4.600%

Subject to the restrictions set forth in the paragraph preceding the caption of this Certificate, this Certificate is transferable by the registered holder hereof in person or by duly authorized attorney on the books of the Trustee upon surrender to the Trustee at its said office of this Certificate accompanied by a written instrument of transfer, duly executed by the registered holder in person or by such attorney, in form satisfactory to the Trustee, and thereupon a new Certificate or Certificates in authorized denominations for the same aggregate principal amount will be issued to the transferee in exchange herefor and if less than the entire unpaid principal amount hereof is transferred, a balance piece therefor will be issued to the transferor. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its Vice Presidents and its corporate seal or a facsimile thereof to be hereon affixed or imprinted and attested by one of its Trust Officers or one of its Assistant Trust Officers.

Dated as of

THE FIRST NATIONAL BANK OF
CHICAGO,

Trustee,

by

Vice President

Attest:

.....
Trust Officer

[FORM OF GUARANTY FOR TRUST CERTIFICATE]

Union Tank Car Company, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate specified in said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein.

UNION TANK CAR COMPANY,

by

Vice President

WHEREAS, it is desired to secure to the holders of the Trust Certificates the payment of the principal thereof and interest thereon, whether by declaration or otherwise, as hereinafter more particularly provided, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

DEFINITIONS

SECTION 1.01. *Definitions.* The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified:

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under direct or indirect common control with, such corporation. For the purposes of this definition, *control* (including *controlled by* and *under common control with*), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management

and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Board of Directors shall mean either the board of directors of the Company or any duly authorized committee of that board.

Company shall mean Union Tank Car Company and any successor or successors to it complying with the provisions of Section 5.09.

Corporate Trust Office shall mean the principal office of the Trustee at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at One First National Plaza, Chicago, Illinois 60670.

Cost, when used with respect to Equipment not built by the Company or any Affiliate of the Company, shall mean the actual cost thereof, and, with respect to Equipment built by the Company or any such Affiliate, shall mean so-called "car builder's cost" including direct cost of labor and material and overhead, but excluding any manufacturing profit.

Deposited Cash shall mean the aggregate of (a) cash and any advance rentals on deposit with or to the credit of the Trustee as provided in the first paragraph of Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 8.05, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(B)(1)(b) and on deposit with or to the credit of the Trustee.

Engineer's Certificate shall mean a certificate signed by the President, any Vice President or any other officer or employee of the Company, appointed by the Company, who is also an engineer, appraiser or other expert, as the case may require, and approved by the Trustee in the exercise of reasonable care.

Equipment shall mean standard-gauge railroad equipment (other than passenger or work equipment) first put into use on or after September 1, 1973.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The word *holder*, when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Independent Engineer shall mean an engineer, appraiser or other expert appointed by the Company and approved by the Trustee in the exercise of reasonable care, who (a) is in fact independent, (b) does not have any substantial interest, direct or indirect, in the Company or in any other obligor on the Trust Certificates or in any Affiliate of the Company or any such other obligor and (c) is not connected with the Company or any other obligor on the Trust Certificates or any Affiliate of the Company or any such other obligor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Interest Payment Date shall mean the date specified in the form of Trust Certificate hereinbefore set forth as a fixed date on which an instalment of interest on the Trust Certificates is payable.

Investment Securities shall mean (a) bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of the interest and principal, (b) open market commercial paper of any company incorporated and doing business under the laws of the United States of America or one of the States thereof given a rating "A-1" or "A-2" by Standard & Poor's Corporation or "prime-1" or better by Moody's Investors Service or an equivalent rating by a successor thereto or a similar rating service substituted therefor and (c) certificates of deposit of or time deposits in banks or trust companies, including the Trustee, incorporated and doing business under the laws of the United States of America or one of the States thereof having a capital and surplus aggregating at least \$50,000,000.

Officers' Certificate shall mean a certificate signed by the Chairman of the Board or the President or any Vice President and by the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the Company. Each such certificate shall include the statements provided for in Section 11.03 if and to the extent required by the provisions thereof.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel who shall be satisfactory to the Trustee and who may, unless in a particular instance the Trustee shall otherwise require, be an employee of or of counsel to the Company. Each such opinion shall include the statements provided for in Section 11.03 if and to the extent required by the provisions thereof. The acceptance by the Trustee of, and its failure to object to, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Outstanding Indebtedness in respect of any unit of original Trust Equipment shall be deemed to mean that amount which bears the same ratio to 75% of the Cost thereof as the unpaid principal amount of indebtedness hereunder as of the date such computation is made bears to \$6,187,500. For the purposes of determining the amount of Outstanding Indebtedness in respect of Equipment substituted for or replacing original Trust Equipment, such substituted or replacement Equipment shall be deemed to have the same Cost as the original Trust Equipment for which it was so substituted or replaced as designated by the Company to the Trustee.

Overdue Interest Rate shall mean the rate of interest on any overdue principal, premium or interest, as specified in the form of Trust Certificate hereinbefore set forth.

The word *principal* shall include any premium.

Prepayment Amount in respect of any period shall mean (i) the Outstanding Indebtedness in respect of Equipment sold or to be sold by the Company during each 12-month period commencing April 1 in each of the years 1979, 1980 and 1981 to British Columbia Railway Company under the terms of the operating sublease between British Columbia Railway Company and the Company, plus (ii) the prepayment premium (as specified in the Form of Trust Certificate) on the amount specified in the foregoing clause (i).

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by the Chairman of the Board or the President or a Vice President of the Company.

Responsible Officer shall mean the chairman of the board of directors or the board of trustees, the vice chairman of the board of directors or the board of trustees, the chairman of the executive committee or the standing committee, the vice chairman of the executive committee or the standing committee, the president, any vice president, the cashier, the secretary, the treasurer, any trust officer, any assistant trust officer, any assistant vice president, any assistant cashier, any assistant secretary, any assistant treasurer or any other officer or assistant officer of the Trustee customarily performing functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

Trust Certificates shall mean Union Tank Car Company Equipment Trust Certificates due October 15, 1989 (Series P-1), issued hereunder.

Trust Equipment shall mean all Equipment at the time subject to the terms of this Agreement.

Trustee shall mean the First National Bank of Chicago, a national banking association, and, subject to the provisions of Article Eight, any successor as trustee hereunder.

The words *herein, hereof, hereby, hereto, hereunder* and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

TRUST CERTIFICATES AND ISSUANCE THEREOF

SECTION 2.01. *Issuance of Trust Certificates.* The net proceeds (excluding any premium and accrued interest, which shall be paid to the Company) of the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee. At the same time the Company shall, if necessary, deposit with the Trustee any advance rental payable by the Company to the Trustee under Section 5.04(A)(1).

Thereupon, without waiting for the recording or filing of this Agreement or of any other instrument respecting the Trust Equipment, the Trustee shall issue and deliver, as the Company shall direct by Request, Trust Certificates in the aggregate principal amount so sold.

The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed the sum of \$6,187,500, except as provided in Sections 2.05 and 2.06.

SECTION 2.02. *Interests Represented by Trust Certificates; Interest; Instalment Payments.* Each of the Trust Certificates shall represent an interest in the amount therein specified in the trust created hereunder. The aggregate principal amount of the Trust Certificates will be payable in 30 semiannual instalments as hereinafter provided on April 15 and October 15 in each year commencing April 15, 1975, and shall bear interest on the unpaid principal amounts thereof at the rate per annum specified in the form thereof hereinbefore set forth, payable semiannually in each year on each Interest Payment Date. Instalments of principal shall be calculated so that

the aggregate of principal and interest payments payable on each date when such payments are due and payable shall be substantially equal and such instalments of principal shall completely amortize the principal amount of the Trust Certificates. The Company will furnish to the Trustee and each holder of Trust Certificates a schedule showing the respective amounts of principal and interest payable on each date when payments are due and payable.

The Trust Certificates shall be in denominations of a minimum of \$10,000.

The principal of and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts.

SECTION 2.03. *Form of Trust Certificates and Guaranty.* The Trust Certificates and the guaranty to be endorsed on the Trust Certificates by the Company as hereinafter in Section 7.01 provided shall be in substantially the form hereinbefore set forth, with such numbers, descriptions or identifications as the Trustee may determine.

SECTION 2.04. *Execution by Trustee.* The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual or facsimile signature of one of its Vice Presidents and its corporate seal or a facsimile thereof shall be affixed or imprinted thereon and attested by the manual signature of one of its Trust Officers or one of its Assistant Trust Officers. In case any officer of the Trustee whose signature, whether facsimile or not, shall appear on any of the Trust Certificates shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had then been such officer of the Trustee.

SECTION 2.05. *Characteristics of Trust Certificates.* (a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the holder, shall be transferable upon presentation and surrender thereof for registration of transfer at the Corporate Trust Office, accompanied by appropriate instruments of assignment and transfer, duly executed by the registered holder of the surrendered Trust Certificate or Certificates or by

duly authorized attorney, in form satisfactory to the Trustee, and shall be dated as of the date of issue, or, if issued after October 15, 1974, as of the Interest Payment Date next preceding the date of issue, unless issued on an Interest Payment Date, in which event they shall be dated as of the date of issue, or unless issued in exchange for another Trust Certificate or Certificates bearing unpaid interest from an earlier date, in which case they shall be dated as of such earlier date, and in any case shall entitle the registered holder to interest from the date thereof.

(b) The Trust Certificates shall be interchangeable in authorized denominations at the Corporate Trust Office.

(c) Anything contained herein to the contrary notwithstanding, the parties hereto may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any notice to the contrary.

(d) The Trustee shall cause to be kept at the Corporate Trust Office books for the registration and registration of transfer of the Trust Certificates.

(e) For any registration of transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.

(f) Each Trust Certificate delivered, pursuant to any provision of this Agreement, in exchange or substitution for, or upon the registration of transfer of, the whole or any part, as the case may be, of one or more other Trust Certificates shall carry all the rights to principal and to interest accrued and unpaid, and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificate shall be so dated that neither gain nor loss in interest or principal shall result from such exchange, substitution or registration of transfer.

(g) The Trustee shall not be required (i) to register the transfer of or exchange any Trust Certificate for a period of ten business days next preceding any Interest Payment Date, or (ii) to issue, register the transfer of or exchange any Trust Certificate during a period beginning at the opening of business ten business days before any selection of Trust Certificates to be redeemed and ending at the close of business on the day of the mailing of the relevant notice of prepayment, or (iii) to register the transfer of or

exchange any Trust Certificate being prepaid in whole or in part, except in the case of any Trust Certificate to be prepaid in part, the portion thereof not to be so prepaid.

(h) Upon Request, the Trustee shall deliver to the Company canceled Trust Certificates held by the Trustee or, if so directed by the Company, may destroy such Trust Certificates and deliver to the Company a certificate of destruction.

SECTION 2.06. *Replacement of Lost Trust Certificates.* In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth, and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the Trustee may determine, in exchange and substitution for, and upon cancelation of, the mutilated or defaced Trust Certificate, or in lieu of and in substitution for the same if lost, destroyed or stolen. The Company shall execute its guaranty on any Trust Certificates so delivered. The applicant for a new Trust Certificate shall furnish to the Trustee and to the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee and by the Company in their discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutilated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

ARTICLE THREE

PREPAYMENT OF TRUST CERTIFICATES

SECTION 3.01. *Right of Prepayment and Prepayment Price.* The Trust Certificates are subject to prepayment, at the option of the Company pursuant to the terms specified in the Form of Trust Certificate, during each 12-month period commencing April 1 in each of the years 1979, 1980 and 1981, such prepayment in each such period not to be in excess of the

Outstanding Indebtedness on 200 units, 200 units and 100 units of Trust Equipment, respectively, plus the prepayment premium specified in the form of Trust Certificate hereinbefore set forth, together with, in each case, accrued and unpaid interest to the date fixed for prepayment. The Company may make said optional prepayments only to the extent of the Prepayment Amount for the respective period and only if (1) British Columbia Railway Company, under the terms of its operating sublease with the Company with respect to the Equipment listed in Schedule A, as the same may be supplemented from time to time, elects to purchase certain of said Equipment from the Company in the periods in which the Company is entitled to prepay the Certificates as specified in the form of Trust Certificate hereinbefore set forth and (2) the Company applies the Prepayment Amount in the respective period to prepay Trust Certificates. The option may be exercised only once in each of the 12-month periods commencing April 1 in each of the years 1979, 1980 and 1981 and shall be non-cumulative so that the failure to exercise in any period shall not entitle the Company to increase the principal which may be prepaid in any subsequent period in accordance with this Section.

SECTION 3.02. *Procedure for Prepayment; Notice of Prepayment.* The procedure for the optional prepayment of Trust Certificates shall be as follows:

(1) In case the Company shall desire to prepay Trust Certificates pursuant to Section 3.01, it shall deliver an Officers' Certificate to the Trustee giving notice of the exercise of such right of prepayment, stating that all conditions precedent to exercise of such option to prepay Trust Certificates have occurred and specifying the units of Equipment to be purchased by British Columbia Railway Company, the Prepayment Amount, the aggregate principal amount of Trust Certificates to be prepaid, the amount of the accrued and unpaid interest and the date fixed for prepayment (which date shall be at least 60 days after delivery of such Officers' Certificate).

(2) The Trustee shall apply, subject to Section 3.01, the Prepayment Amount upon receipt thereof to the pro rata prepayment of each instalment of principal remaining unpaid on the Trust Certificates (in proportion to the principal amount represented by each such instalment), each of the holders of the Trust Certificates to share proportionately in such prepayment.

(3) The Trustee shall mail a notice of prepayment at least 30 days prior to the prepayment date to the holders of Trust Certificates at their last addresses as they shall appear upon the registry books. Failure to give such notice, or any defect therein, as to any Trust Certificate shall not affect the validity of the proceedings for the prepayment of any other Trust Certificate. Any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the holder receives the notice.

(4) The notice of prepayment shall specify the amount of unpaid principal to be prepaid and shall contain a revised schedule of payments of principal, as furnished to the Trustee by the Company, thereafter to be made on each Trust Certificate to be outstanding, calculated as provided in Section 2.02.

SECTION 3.03. *Prepayment Becomes Due.* Notice of prepayment having been completed as above provided, and the Company on or before the prepayment date specified in the notice of prepayment having deposited with the Trustee the Prepayment Amount as provided in Section 5.06, the Trust Certificates or portions of principal thereof to be prepaid shall become due and payable on such prepayment date at the Corporate Trust Office, and from and after such prepayment date interest on such Trust Certificates or such portions thereof shall cease to accrue and such Trust Certificates or such portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit of this Agreement except to receive payment from the moneys reserved therefor in the hands of the Trustee.

ARTICLE FOUR

ACQUISITION OF TRUST EQUIPMENT BY TRUSTEE; DEPOSITED CASH

SECTION 4.01. *Acquisition of Equipment by Trustee.* The Company, as speedily as may be, shall cause to be sold, assigned and transferred to the Trustee, as trustee for the holders of the Trust Certificates, the Equipment described in Schedule A hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may be one or more of the officers or agents of the

Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust created hereby, other Equipment in lieu of or in addition to any of the Equipment specifically described in Schedule A hereto prior to or after the delivery of such Equipment to the Trustee or its agent or agents, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment, to be included under said trust.

SECTION 4.02. *Payment of Deposited Cash.* From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Section 4.01, the Trustee shall (subject to the provisions of Section 4.03) pay, upon Request, to the manufacturers or owners of the delivered Trust Equipment out of Deposited Cash an amount which will equal 75% of the aggregate Cost of such Trust Equipment, as specified in the Officers' Certificate furnished to the Trustee pursuant to Section 4.04(b).

SECTION 4.03. *Payment of Deficiency.* The Company covenants that, contemporaneously with any payment by the Trustee pursuant to Section 4.02, it will pay to the Trustee the advance rental provided in Section 5.04(A)(2), and thereupon the Trustee shall, upon Request, pay to the manufacturers or owners of the delivered Trust Equipment, by the use of such advance rental, the portion of the Cost of the delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02; the intention being that the Company shall ultimately pay not less than 25% of the Cost of all the Trust Equipment delivered to the Trustee pursuant to this Article Four, and the Trustee and the Company shall at any time, if occasion arises, adjust their accounts and payments to the end that the Trustee shall pay with Deposited Cash not more than 75% of such Cost and the Company shall pay the remainder, to be not less than 25% of such Cost.

SECTION 4.04. *Supporting Papers.* The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it shall have received:

(a) a certificate of the agent or agents designated by the Trustee to receive delivery of the Trust Equipment, stating that the Trust Equip-

ment described and specified therein by number or numbers has been delivered to such agent or agents;

(b) an Officers' Certificate which shall state (i) that such Trust Equipment is Equipment as herein defined, (ii) that the Cost of such Trust Equipment is an amount therein specified or is not less than an amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or that such unit was first put into use not earlier than a specified date, (iv) whether such Trust Equipment has, within six months prior to the date of its acquisition by the Company, been used or operated, by a person or persons other than the Company or a wholly-owned Affiliate of the Company, in a business similar to that in which it has been or is to be used or operated by the Company and (v) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with;

(c) an Engineer's Certificate which shall state the fair value to the Company, in the opinion of the signer, of such Trust Equipment as of the date of the above-mentioned Request;

(d) a bill or bills of sale of such Trust Equipment from the manufacturers or owners thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder; and

(e) an Opinion of Counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee title to such Trust Equipment free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) that in case of any Trust Equipment not specifically described herein, a proper supplement hereto in respect of such Trust Equipment has been duly executed by the Trustee and the Company and (iii) that, in the opinion of such counsel, all conditions precedent provided for in this Agreement, relating to the payment in question, have been complied with.

If the Trust Equipment for which payment is being made has, within six months prior to the date of its acquisition by the Company, been used or operated, by a person or persons other than the Company, or a wholly-owned Affiliate of the Company, in a business similar to that in which it has been or is to be used or operated by the Company and the fair value to the Company of such Trust Equipment is not less than 1% of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (c) above shall be signed by an Independent Engineer.

Any Officers' Certificate delivered pursuant to this Section 4.04 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officers' Certificate to be delivered to the Trustee.

If the aggregate final Cost or fair value, whichever is less, as specified in the certificates theretofore delivered to the Trustee pursuant to this Section 4.04, of the Trust Equipment delivered to the Trustee or its agent or agents pursuant to this Article Four shall be less than 133⅓% of the aggregate principal amount of Trust Certificates issued pursuant to Section 2.01, the Company will cause to be sold, assigned and transferred to the Trustee additional Equipment in such amount and of such Cost that the aggregate final Cost or fair value, whichever is less, of the Trust Equipment will be at least 133⅓% of the aggregate principal amount of said Trust Certificates.

ARTICLE FIVE

LEASE OF TRUST EQUIPMENT TO THE COMPANY

SECTION 5.01. *Lease of Trust Equipment.* The Trustee does hereby let and lease to the Company, for a term ending on October 15, 1989 from and after April 1, 1974, all of the Trust Equipment.

SECTION 5.02. *Equipment Automatically Subjected.* As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents, the same shall, *ipso facto* and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

SECTION 5.03. *Additional and Substituted Equipment Subject Hereto.* In the event that the Company shall, as provided in Section 4.01, 4.04 or

5.06, cause to be transferred to the Trustee other Equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

SECTION 5.04. *Rental Payments.* The Company hereby accepts the lease of all the Trust Equipment, and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or, in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the following items, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment):

(A) The Company shall pay to the Trustee, as hereinafter provided, as advance rental hereunder, sums which in the aggregate shall be equal to the difference between the aggregate Cost of the Trust Equipment (other than Trust Equipment subjected hereto pursuant to Section 5.06 or the last paragraph of Section 4.04) and the portion of such Cost to be provided out of the net proceeds (excluding premium and accrued interest, if any) of the sale of the Trust Certificates, the intention being that, when all such Trust Equipment shall have been delivered to the Trustee or its agent or agents, the Company shall have paid or shall pay to the Trustee, as advance rental hereunder, a sum equal to the amount by which the aggregate Cost of such Trust Equipment exceeds such net proceeds of the sale of the Trust Certificates. The Company agrees to pay such advance rental as follows:

(1) at the time of issue of Trust Certificates pursuant to Section 2.01 a sum which, when added to such net proceeds of the sale of the Trust Certificates deposited with or to the credit of the Trustee, will make the total sum deposited equal to the principal amount of the Trust Certificates so issued; and

(2) upon delivery of any of such Trust Equipment, a sum equal to the portion of the Cost of such delivered Trust Equipment not paid out of Deposited Cash as provided for in Section 4.02, but not less than 25% of such Cost.

(B) In addition to such advance rental the Company shall pay to the Trustee, as hereinafter provided, as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:

(1) from time to time upon demand of the Trustee (a) the necessary and reasonable expenses of the trust hereby created, including compensation and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at time of purchase) in connection with any purchase, sale or redemption by the Trustee of Investment Securities;

(2) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;

(3) (a) the amounts of the interest payable on the Trust Certificates, when and as the same shall become payable, and (b) interest at the Overdue Interest Rate from the due date, upon the amount of any instalments of rental payable under this subparagraph (3) and the following subparagraph (4) which shall not be paid when due, to the extent legally enforceable; and

(4) the principal of the Trust Certificates when and as the same shall become payable, whether upon the respective stated dates thereof or upon prepayment pursuant to Article Three or otherwise under the provisions thereof or of this Agreement, whether by declaration or otherwise.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate any tax, assessment or governmental charge required by any present or future law of the United States of America, or of

any state, county, municipality or other taxing authority thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or of the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 5.05. *Termination of Lease.* At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (1) such payments shall be applied and treated as purchase money and as the full purchase price of the Trust Equipment, (2) any moneys remaining in the hands of the Trustee after providing for payment in full of all outstanding Trust Certificates and after paying the expenses of the Trustee, including its reasonable compensation, shall be paid to the Company, (3) title to all the Trust Equipment shall vest in the Company and (4) the Trustee shall execute for record in public offices, at the expense of the Company, such instrument or instruments in writing as reasonably shall be requested by the Company in order to make clear upon public records the Company's title to all the Trust Equipment under the laws of any jurisdiction; *provided, however*, that until that time title to the Trust Equipment shall not pass to or vest in the Company, but title to and ownership of all the Trust Equipment shall be and remain in the Trustee, notwithstanding the delivery of the Trust Equipment to and the possession and use thereof by the Company.

SECTION 5.06. *Substitution and Replacement of Equipment.* Upon Request, the Trustee shall, at any time and from time to time, execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to any or all of the Trust Equipment; *provided, however*, that none of the Trust Equipment shall be so assigned or transferred (except as provided in Sections 5.05 and 5.08) unless simultaneously (a) there shall be conveyed to the Trustee other Equipment of a fair value to the Company not less than the fair value, as of the date of such Request, of the Trust Equipment so

assigned or transferred by the Trustee or (b) there shall be paid to the Trustee cash in an amount not less than the fair value, as of said date, of the Trust Equipment so assigned or transferred by the Trustee, or (c) there shall be paid to the Trustee cash in an amount not less than the Outstanding Indebtedness (plus the prepayment premium thereon specified in the form of Trust Certificate hereinbefore set forth together with accrued and unpaid interest thereon to the date fixed for prepayment in the notice of prepayment mentioned below) in respect of the Trust Equipment so to be assigned or transferred by the Trustee (which shall be Equipment subject to this Agreement that is to be purchased by British Columbia Railway Company as contemplated in Section 3.01 hereof) and there shall have been theretofore delivered, pursuant to Article Three hereof, notice of prepayment of the Certificates in an aggregate principal amount equal to the cash so paid, such prepayment to be made on the date of such payment of cash to the Trustee hereunder.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if other Equipment is to be conveyed to the Trustee in substitution for the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee the following papers:

(1) an Engineer's Certificate stating (i) the fair value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (ii) that such assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof and (iii) the fair value to the Company of such substituted units of Equipment as of such date;

(2) an Officers' Certificate stating (i) the date each unit of Trust Equipment so to be assigned or transferred by the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (ii) the original Cost of the Equipment so to be substituted and the date such Equipment was first put into use (or that such Equipment was first put into use not earlier than a specified date), (iii) that each such unit so to be substituted is Equipment as herein defined, (iv) that no Event of Default has occurred and is continuing and (v) that, in the opinion of the signers, all conditions precedent provided for in this Agreement, relating to such substitution, have been complied with;

(3) a certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d) of the first paragraph of Section 4.04; and

(4) an Opinion of Counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all liens and encumbrances (including any leasehold interest therein) other than the rights of the Company hereunder, (ii) that a proper supplement hereto in respect of such substituted Equipment has been duly executed by the Trustee and the Company and (iii) that, in the opinion of such counsel, all conditions precedent provided for in this Agreement, with respect to such substitution, have been complied with.

If the fair value of the Trust Equipment to be assigned or transferred by the Trustee, together with all other property so assigned or transferred since the commencement of the then current calendar year, as set forth in the certificate or certificates required by this Section 5.06, is 10% or more of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer unless the fair value of the Trust Equipment to be assigned or transferred, as set forth in such certificate, is less than 1% of the aggregate principal amount of Trust Certificates at the time outstanding. If any Equipment to be conveyed to the Trustee pursuant to this Section 5.06 has, within six months prior to the date of its acquisition by the Company, been used or operated, by a person or persons other than the Company or a wholly-owned Affiliate of the Company, in a business similar to that in which it has been or is to be used or operated by the Company, and the fair value to the Company of such Equipment is not less than 1% of the aggregate principal amount of Trust Certificates at the time outstanding, the Engineer's Certificate referred to in subparagraph (1) above shall be signed by an Independent Engineer.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 in so far as they relate to the action requested,

except that such papers need not be delivered in the event that such Request will result in cash being paid to the Trustee pursuant to clause (c) of said first paragraph.

Cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to Section 5.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value, as of the date of said Request, not less than the amount of cash so paid, and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 in so far as they relate to the action requested; *provided, however*, that notwithstanding the foregoing provisions of this sentence, the portion of any cash deposited with the Trustee pursuant to clause (c) of the first paragraph of this Section 5.06 shall be deemed to be deposited with the Trustee for the purposes of effecting prepayment of Trust Certificates pursuant to the provisions of Article Three.

For all purposes of this Section 5.06, where fair value is not required to be determined by an Independent Engineer, fair value shall be determined as follows (and the manner of such determination shall be set forth in each Engineer's Certificate furnished in respect thereof, including a statement of actual fair value or fair value to the Company, as the case may be, without reference to the provisions of subparagraphs (1) and (2) of this paragraph):

(1) The fair value of any unit of Trust Equipment assigned or transferred by the Trustee as provided in this Section 5.06 shall be deemed to be the greater of (a) the actual fair value thereof and (b) the Cost thereof as theretofore certified to the Trustee less 1/20th of such Cost for each full period of one year elapsed between the date such unit was first put into use as certified to the Trustee and the date as of which fair value is to be determined.

(2) The fair value of any unit of Equipment conveyed to the Trustee as provided in this Section 5.06 shall be deemed to be the lesser of (a) the actual fair value thereof and (b) the cost of such unit, if new, or, in case of any unit of Equipment not new, (i) the depreciated book value thereof on the books of the owner thereof, as of the date of the transfer thereof to the Trustee, or (ii) the Cost thereof, less 1/20th of such Cost for each full period of one year elapsed between the date such

unit was first put into use and the date of the transfer thereof to the Trustee or (iii) the value thereof, as of said last mentioned date, as determined in accordance with the Code of Rules Governing the Condition of and Repairs to Freight and Passenger Cars for the Interchange of Traffic, Adopted by the Association of American Railroads, Operations and Maintenance Department, Mechanical Division, as in effect at the time in question (or, if there is no such Code then in effect, sound accounting principles), whichever shall be less, not exceeding, however, in any case, the estimated Cost of such unit if it had been constructed on or about January 15, 1974, less depreciation for such unit at the rate of 1/20th of such Cost for each full period of one year that shall have elapsed since such unit was first put into use.

For all purposes of this Section 5.06, where fair value is required to be determined by an Independent Engineer, such fair value shall be determined without requiring reference to the provisions of subparagraphs (1) and (2) of the next preceding paragraph.

Any Officers' Certificate delivered pursuant to this Section 5.06 may state that the Cost of the Trust Equipment therein referred to is tentatively determined, subject to final adjustment to be evidenced in a final Officers' Certificate to be delivered to the Trustee.

SECTION 5.07. *Marking of Trust Equipment.* The Company agrees that, as soon as practicable after the delivery to the Trustee pursuant to this Agreement of each unit of the Trust Equipment, there shall be plainly, distinctly, permanently and conspicuously placed and fastened upon each side of such unit a metal plate bearing the following words, or such words shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side of such unit, in either case in letters not less than three-eighths inch in height:

TITLE TO THIS CAR IS VESTED IN A TRUSTEE UNDER THE TERMS OF AN
EQUIPMENT TRUST AGREEMENT RECORDED UNDER SECTION 20c OF THE
INTERSTATE COMMERCE ACT

Such plates or marks shall be such as to be readily visible and as to indicate plainly the Trustee's ownership of each unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the

Company shall forthwith cause the same to be restored or replaced. The Company shall not change, or permit to be changed, the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company and which shall be filed and recorded in like manner as this Agreement.

The Trust Equipment may be lettered UNION TANK CAR COMPANY, PROCOR LIMITED, UTLX, or in some other appropriate manner for convenience of identification of the leasehold interest of the Company therein, and may also be lettered, in case of a sublease of any equipment made pursuant to Section 5.09 hereof, in such manner as may be appropriate for convenience of identification of the subleasehold interest therein; but the Company, during the continuance of the lease provided for herein, will not allow any lettering or designation to be placed on any of the Trust Equipment claiming ownership thereof by the Company or by any person, firm, association or corporation other than the Trustee.

SECTION 5.08. *Maintenance of Trust Equipment.* The Company agrees that it will maintain and keep all the Trust Equipment in good order and proper repair at its own cost and expense, unless and until it becomes worn out, unsuitable for use, lost or destroyed (hereinafter called a Casualty Occurrence). Whenever any of the Trust Equipment shall suffer a Casualty Occurrence, the Company shall, within 30 days after it shall have been informed of such Casualty Occurrence, deliver to the Trustee an Engineer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date such Trust Equipment suffered such Casualty Occurrence. When the total fair value of all of the Trust Equipment having suffered a Casualty Occurrence (exclusive of Trust Equipment having suffered a Casualty Occurrence in respect of which a payment shall have been made to the Trustee pursuant to this Section) shall amount to 2% of the principal amount of Trust Certificates then outstanding, (or such lesser amount as the Company may elect), the Company shall, within 30 days of its having been informed of such event, deposit with the Trustee an amount in cash equal to the fair value of such Trust Equipment as of the date of the Casualty Occurrence in respect thereof. The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be

affected by reason of any Casualty Occurrence. Cash deposited with the Trustee pursuant to this Section 5.08 shall be held and applied as provided in the fourth paragraph of Section 5.06. For all purposes of this paragraph, fair value shall be determined in the manner provided in subparagraph (1) of the penultimate paragraph of Section 5.06.

Upon the deposit of cash with the Trustee pursuant to this Section 5.08, the Trustee shall execute and deliver a bill of sale assigning and transferring to the transferee named by the Company all the right, title and interest of the Trustee in and to the Trust Equipment which has suffered a Casualty Occurrence and in respect of which such deposit is made.

The Company covenants and agrees to furnish to the Trustee, whenever required by the Trustee, and at least once, on or before May 15, in every calendar year commencing in 1975 and during the continuance of the lease provided for herein, an Officers' Certificate, dated as of the preceding February 14, stating (1) the amount, description and numbers of all Trust Equipment that has suffered a Casualty Occurrence since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), and (2) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement) the plates or marks required by Section 5.07 have been preserved, or that such Trust Equipment when repainted or repaired has been again plated or marked as required thereby. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

SECTION 5.09. *Possession of Trust Equipment.* Except as provided in this Section 5.09, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof, without the written consent of the Trustee first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or transfer to a corporation which shall acquire all or substantially all of the property of the Company (whether by merger, consolidation or otherwise) and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants

of the Company hereunder and under the guaranty endorsed on the Trust Certificates shall not be deemed a breach of this covenant. The appointment of a receiver or receivers in equity or reorganization or a trustee or trustees in bankruptcy or reorganization for the Company or for its property shall not be deemed an unauthorized assignment if, prior to any action by the Trustee to exercise the remedies herein provided, such receiver or receivers or trustee or trustees shall be discharged or such receiver or receivers or trustee or trustees shall, pursuant to court order or decree, in writing duly assume and agree to pay or perform each and all of the obligations and covenants of the Company hereunder and under the guaranty endorsed on the Trust Certificates, in such manner that such obligations shall have the same status as obligations incurred by such receiver or receivers or trustee or trustees.

So long as the Company shall not be in default under this Agreement, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof, and the Company may also (a) furnish the Trust Equipment or any part thereof to railroad companies for use upon the lines of railroad owned or operated by them or over which they have trackage rights and upon connecting and other carriers in the usual interchange of traffic, or to others than railroad companies for use in their business, or (b) sublet all or any part of the Trust Equipment, but only, in either case, upon and subject to all the terms and conditions of this Agreement, and to all rights of the Trustee hereunder.

Any such sublease (including the lease to British Columbia Railway herein contemplated) may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled (subject to the rights of the Trustee upon the happening of an Event of Default) to the possession of the Trust Equipment included in such sublease and the use thereof, and, subject to the provisions of Section 5.07, may provide for lettering or marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee therein. Every such sublease shall expressly subject the rights of the sublessee under such sublease to the rights of the Trustee in respect of the Trust Equipment covered by such sublease in the event of the happening of an Event of Default.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or

sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

SECTION 5.10. *Patent Indemnity.* The Company covenants and agrees to indemnify the Trustee against any and all claims arising out of or connected with the ownership or use of any of the Trust Equipment, and particularly against any and all claims arising out of the use of any patented inventions in and about the Trust Equipment, and to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment, or any thereof, may be operated, and with all lawful acts, rules, regulations and orders of any commissions, boards and other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; *provided, however,* that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims or the commencement or prosecution of any litigation in respect thereof.

ARTICLE SIX

REMEDIES IN EVENT OF DEFAULT

SECTION 6.01. *Events of Default.* The Company covenants and agrees that in case

(a) the Company shall default in the payment of any part of the rental payable hereunder (including advance rental) for more than 30 days after the same shall have become due and payable, or

(b) the Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or shall make any unauthorized transfer or sublease of any of the Trust Equipment, or, except as herein

authorized, shall part with the possession of any of the Trust Equipment, and shall fail or refuse either to cause such assignment or transfer or sublease to be canceled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancelation and recovery of possession, or within said 30 days to deposit with the Trustee a sum in cash equal to the Cost, or, in the case of Trust Equipment conveyed to the Trustee pursuant to Section 5.06 hereof, the fair value (as of the date of conveyance), of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than as herein authorized, as certified to the Trustee pursuant to Section 4.04 or Section 5.06 (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

(c) the Company shall, for more than 60 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or

(d) the lease provided for herein shall be terminated by operation of law, or

(e) an event of default shall occur under any lease, agreement, equipment trust agreement or indenture under which the Company is an obligor and the Trustee is also acting as trustee thereunder (the term "event of default" being used in this subparagraph (d) to mean any event which, after any applicable notice and/or period of grace provided for in the instrument in question, permits the trustee thereunder to declare the principal amount of the obligation issued or secured thereby to become immediately due and payable),

then, in any such case (herein sometimes called an Event of Default), the Trustee, by notice in writing to the Company, or the holders of not less than 25% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare to be due and payable forthwith (i) the unpaid principal amount of all Trust Certificates then outstanding and (ii) the entire amount of the rentals (including any

unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such principal and such rentals shall forthwith become due and payable immediately without further demand, together with interest at the Overdue Interest Rate, to the extent legally enforceable, on any portion thereof overdue.

In case the Company shall fail to pay any instalment of rental payable pursuant to Section 5.04(B)(3) or (B)(4) when and as the same shall have become due and payable hereunder, and such default shall have continued for a period of 30 days, the Trustee, in its own name and as trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the moneys adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Trust Certificates under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid advance rental, but not including rentals required for the payment of interest accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and

counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute all amounts received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf, provided, however, that nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any holder of Trust Certificates any plan of reorganization, arrangement, adjustment or composition affecting the Trust Certificates or the rights of any holder thereof, or to authorize the Trustee to vote in respect of the claim of any holder of Trust Certificates in any such proceeding; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payments to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its negligence or bad faith.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

SECTION 6.02. *Remedies.* In case of the happening of any Event of Default, the Trustee may by its agents enter upon the premises of the Company and of any sublessee where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw

the same from said premises, retaining all payments which up to that time may have been made on account of rental for the Trust Equipment and otherwise, and shall be entitled to collect, receive and retain all unpaid *per diem*, mileage or other charges of any kind earned by the Trust Equipment or any part thereof, and may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot and as an entirety or in separate lots, in so far as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right or action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of all the items mentioned in Section 5.04 (other than interest not then accrued), whether or not they shall have then matured. The foregoing provisions are subject to all applicable mandatory requirements of law.

SECTION 6.03. *Application of Proceeds.* If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums which may then be held by the Trustee under any of the provisions hereof (other than sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority, (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement, (b) of the interest then due, with interest on overdue interest at the Overdue Interest Rate to the extent legally enforceable and (c) of the principal of all the outstanding Trust Certificates, with interest thereon at the Overdue Interest Rate to the extent legally enforceable from the last preceding Interest Payment Date, whether such Trust Certificates shall have matured by their terms or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then *pro rata* without preference between principal and interest.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee as aforesaid there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying as aforesaid the sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

SECTION 6.04. *Waivers of Default.* Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default in the payment of any instalment of rental payable pursuant to Section 5.04(B)(3) or (B)(4), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as in Section 6.01 provided, but before October 15, 1989, all arrears of rent (with interest at the Overdue Interest Rate upon any overdue instalments, to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental instalments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of a majority in principal amount of the Trust Certificates then outstanding and which shall not have matured (other than by declaration) according to their terms, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

SECTION 6.05. *Obligations of Company Not Affected by Remedies.* No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder or the obligations of the Company under the guaranty endorsed on the Trust Certificates. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and of any default in the payment of the principal of and interest on the Trust Certificates.

SECTION 6.06. *Company to Deliver Trust Equipment to Trustee.* In case the Trustee shall rightfully demand possession of any of the Trust Equip-

ment in pursuance of this Agreement, the Company will, at its own expense, forthwith and in the usual manner and at usual speed, cause such Trust Equipment to be drawn to such point or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. The performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

SECTION 6.07. *Trustee to Give Notice of Default, but May Withhold Under Certain Circumstances.* The Trustee shall give to the holders of the Trust Certificates notice of each default hereunder known to the Trustee within 30 days after the occurrence thereof, unless such default shall have been remedied or cured before the giving of such notice; *provided* that, except in the case of default in the payment of any part of the rental payable hereunder pursuant to Section 5.04(B)(3) or (B)(4) hereof, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers in good faith determine that the withholding of such notice is in the interests of the holders of the Trust Certificates. The term "default" as used in this Section 6.07 shall mean the happening of any event defined as an Event of Default in Section 6.01, except that, for the purposes of this Section 6.07 only, there shall be eliminated from the definition of any such event as specified in Section 6.01 any reference to the making of a written demand or the continuance, or the continuance in force, for any period of days of any default or failure on the part of the Company referred to in such definition.

SECTION 6.08. *Limitations on Suits by Holders of Trust Certificates.* No holder of any Trust Certificate shall have any right by virtue or by availing of any provision of this Agreement to institute any action or proceedings at law or in equity or in bankruptcy or otherwise, upon or under or with respect to this Agreement, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as

hereinbefore provided, and unless also the holders of a majority in aggregate principal amount of the Trust Certificates then outstanding shall have made written request to the Trustee to institute such action or proceedings in its own name as trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such action or proceedings and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 6.10; it being understood and intended, and being expressly covenanted by the holder of every Trust Certificate with every other holder and the Trustee, that no one or more holders of Trust Certificates shall have any right in any manner whatever, by virtue or by availing of any provision of this Agreement, to affect, disturb, or prejudice the rights of any other holder of Trust Certificates, or to obtain or seek to obtain priority over or preference to any other such holder or to enforce any right under this Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all holders of Trust Certificates. For the protection and enforcement of the provisions of this Section 6.08, each and every holder of a Trust Certificate and the Trustee shall be entitled to such relief as can be given either at law or in equity.

SECTION 6.09. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provision in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of, and interest on, such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

SECTION 6.10. Control by Holders of Trust Certificates. The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or

exercising any trust or power conferred on the Trustee; *provided, however*, that, subject to the provisions of Section 8.02, the Trustee shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, determines that the action so directed may not lawfully be taken.

SECTION 6.11. *Right of Court to Require Filing of Undertaking to Pay Costs.* All parties to this Agreement agree, and each holder of any Trust Certificate by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section 6.11 shall not apply to any suit instituted by the Trustee, to any suit instituted by any holder of a Trust Certificate, or group of holders of the Trust Certificates, holding in the aggregate more than 10% in principal amount of the Trust Certificates outstanding, or to any suit instituted by any holder of a Trust Certificate for the enforcement of the payment of the principal of, or interest on, any Trust Certificate on or after the due date expressed in such Trust Certificate.

SECTION 6.12. *Remedies Cumulative.* The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

ADDITIONAL COVENANTS AND AGREEMENTS BY THE COMPANY

SECTION 7.01. *Guaranty of Company.* The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and

payable, in accordance with the provisions thereof or of this Agreement (and, if not so paid, with interest thereon until paid at the Overdue Interest Rate to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificates (and, if not so paid, with interest thereon until paid at the Overdue Interest Rate to the extent legally enforceable); and the Company further covenants and agrees to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and of the interest thereon, in substantially the form hereinbefore set forth. Said guaranty so endorsed shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its President or a Vice President. In case any officer of the Company whose signature shall appear on said guaranty shall cease to be such officer before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such guaranty shall nevertheless be as effective and binding upon the Company as though the person who signed said guaranty had not ceased to be or had then been such officer.

SECTION 7.02. *Discharge of Liens.* The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, except upon the leasehold interest of the Company therein; but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interest of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

SECTION 7.03. *Payment of Expenses; Recording.* The Company covenants and agrees to pay the expenses incident to the preparation and execution of the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust

Equipment. The Company will, promptly after the execution and delivery of this Agreement and each supplement hereto, respectively, cause this Agreement and such supplement to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments, and file, register and record this Agreement and each supplement hereto in all other jurisdictions, required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof; *provided, however*, that the Company shall not be required to take any such action if (1) the Company deems such action unduly burdensome and (2) after giving effect to the failure to take such action, the Company has taken all action required by law so as to protect the title of the Trustee to units of Equipment having a fair value of not less than 90% of the aggregate fair value of all of the Trust Equipment (such fair value to be determined in the manner provided in subparagraph (1) of the penultimate paragraph of Section 5.06).

Promptly after the execution and delivery of this Agreement and each supplement hereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, this Agreement or such supplement, as the case may be, has been properly recorded and filed so as effectively to protect the title of the Trustee to the Trust Equipment and its rights and the rights of the holders of the Trust Certificates hereunder and thereunder and reciting the details of such action or stating that in the opinion of such Counsel no such action is necessary; and the Company shall furnish to the Trustee, not more than three months after the anniversary in each year, commencing with the year 1975, of the first recording or filing of this Agreement, an opinion of Counsel stating either that, in the opinion of such counsel, (i) such action has been taken with respect to the recording, filing, rerecording and refiling of this Agreement and each supplement hereto as is necessary for the proper protection of the title of the Trustee to the Trust Equipment and the rights of the Trustee and holders of the Trust Certificates hereunder and thereunder and reciting the details of such action, or (ii) no such action is necessary for any of such purposes.

SECTION 7.04. *Further Assurances.* The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

ARTICLE EIGHT

THE TRUSTEE

SECTION 8.01. *Acceptance of Trusts.* The Trustee hereby accepts the trust imposed upon it by this Agreement, and covenants and agrees to perform the same as herein expressed.

SECTION 8.02. *Duties and Responsibilities of the Trustee; During Default; Prior to Default.* In case an Event of Default has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own wilful misconduct, except that

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

(1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and

(2) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically

required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement.

The provisions of this Section 8.02, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to Section 8.11.

SECTION 8.03. *Certain Rights of the Trustee.* Except as otherwise provided in Section 8.02:

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent order, trust certificate guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

(c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred therein or thereby;

(d) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement; and

(e) no provision of this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if there shall be reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The provisions of this Section 8.03, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to Section 8.11.

SECTION 8.04. *Application of Rentals; Responsibility of Trustee to Insure or Record.* The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(B) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(B).

Except as otherwise provided in Section 8.02, the Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expenses; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refileing or rerecording of this Agreement or of any supplement hereto or statement of new numbers. The provisions of this paragraph, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to Section 8.11.

SECTION 8.05. *Funds May be Held by Trustee; Investments in Investment Securities.* Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustee as herein provided may be carried by the Trustee on deposit with itself, and, if and to the extent permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee will allow interest upon any such moneys held by it in trust at the rate generally prevailing among banks and trust

companies located in the city where the Corporate Trust Office of the Trustee is located, or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 5.06 or Section 5.08 (hereinafter in this Section 8.05 called Replacement Funds) in Investment Securities, of such type and at such prices, including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, rent received by it for that purpose under the provisions of Section 5.04(B)(1)(b).

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 8.05, or any interest paid by any bank or bankers on deposits to the credit of the Trustee with such bank or bankers and any interest (in excess of accrued interest, brokers' fees or other expenses paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

SECTION 8.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties By Agents; Reimbursement of Expenses; Holding of Trust Certificates; Moneys Held in Trust. Except as otherwise provided in Section 8.02, the Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

Except as otherwise provided in Section 8.02, the Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and wilful defaults and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof), or for the guaranty by the Company.

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Any moneys at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

The provisions of this Section 8.06, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to Section 8.11.

SECTION 8.07. *Persons Eligible for Appointment as Trustee.* There shall at all times be a Trustee hereunder which (other than a co-trustee or separate trustee appointed pursuant to Section 8.11) shall be a corporation organized and doing business under the laws of the United States of America or of the State of Illinois, or of the State of New York, having its principal office and place of business in the City of Chicago, State of Illinois, or the Borough of Manhattan, City and State of New York, having a combined capital and surplus of at least \$5,000,000, and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for

the purposes of this Section 8.07, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.07, the Trustee shall resign immediately in the manner and with the effect specified in Section 8.08.

SECTION 8.08. *Resignation and Removal; Appointment of Successor Trustee.* (a) The Trustee may at any time resign by giving written notice of resignation to the Company and by mailing notice of resignation to all holders of Trust Certificates at their last addresses appearing on the registry books. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors of the Company, one copy of which instrument shall be delivered to the Trustee so resigning and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months may, subject to the provisions of Section 6.11, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(1) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.07 and shall fail to resign after written request therefor by the Company or by any such holder of a Trust Certificate, or

(2) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of its

Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The holders of a majority in aggregate principal amount of the Trust Certificates at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee to be removed to the successor trustee so appointed and to the Company the evidence provided for in Section 10.01 of the action taken by the holders of the Trust Certificates.

(d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 9.08 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 8.09.

The provisions of this Section 8.08, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to Section 8.11.

SECTION 8.09. *Acceptance of Appointment by Successor Trustee.* Any successor trustee appointed as provided in Section 8.08 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges then unpaid, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly

vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such trustee to secure any amounts then due it pursuant to the provisions of Section 8.06.

No successor trustee shall accept appointment as provided in this Section 8.09 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 8.07.

Upon acceptance of appointment by a successor trustee as provided in this Section 8.09, the Company shall mail notice of the succession of such trustee hereunder to the holders of the Trust Certificates at their last addresses appearing on the registry books. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

SECTION 8.10. *Merger or Consolidation of Trustee.* Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be qualified under the provisions of Section 8.07 and eligible under the provisions of Section 8.07, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

SECTION 8.11. *Appointment of Co-Trustees or Separate Trustees.* If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which the Trust Equipment or any thereof is located, or the Trustee shall be advised by counsel, satisfactory to it, that it is so necessary or prudent in the interest of the holders of the Trust Certificates, the Trustee and the Company shall execute and deliver all instruments and agreements necessary or proper to constitute another bank or trust company or one or more persons approved by the Trustee and the Company, either to act as co-trustee or co-trustees, jointly with the Trustee, or to act as separate trustee or trustees hereunder. In the event the Company shall have not joined in the execution of such instruments and agreements within ten days

after the receipt of a written request from the Trustee so to do, or in case an Event of Default shall happen and be continuing, the Trustee may act under the foregoing provisions of this Section 8.11 without the concurrence of the Company; and the Company hereby appoints the Trustee its agent and attorney to act for it under the foregoing provisions of this Section 8.11 in either of such contingencies.

Every additional trustee hereunder shall, to the extent permitted by law, be appointed and act and be such and the Trustee and its successors shall act and be such, subject to the following provisions and conditions, namely:

(1) the Trust Certificates shall be executed and delivered, and all powers, duties, obligations and rights conferred upon the Trustee in respect of the custody, control and management of moneys, papers or securities shall be exercised, solely by The First National Bank of Chicago or its successor as Trustee hereunder;

(2) all rights, powers, duties and obligations conferred or imposed upon the Trustee shall be conferred or imposed upon and exercised or performed by The First National Bank of Chicago or its successor as Trustee, and such additional trustee or trustees jointly, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed, the Trustee shall be incompetent or unqualified to perform such act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such additional trustee or trustees;

(3) no power given to, or which it is provided hereby may be exercised by, any such additional trustee or trustees, shall be exercised by such additional trustee or trustees, except jointly with, or with the consent in writing of, The First National Bank of Chicago or its successor as Trustee, anything herein contained to the contrary notwithstanding;

(4) no trustee hereunder shall be personally liable by reason of any act or omission of any other trustee hereunder; and

(5) the Company and the Trustee, at any time, by an instrument in writing, executed by them jointly, may remove any such additional trustee, and in that case, by an instrument in writing executed by them jointly, may appoint a successor or successors to such additional trustee

or trustees, as the case may be, anything herein contained to the contrary notwithstanding. In the event that the Company shall not have joined in the execution of any such instrument within ten days after the receipt of a written request from the Trustee so to do, the Trustee shall have the power to remove any such additional trustee and to appoint a successor additional trustee without the concurrence of the Company; the Company hereby appointing the Trustee its agent and attorney to act for it in such connection in such contingency. In the event that the Trustee alone shall have appointed an additional trustee or trustees as above provided, it may at any time, by an instrument in writing, remove any such additional trustee, the successor to any such additional trustee so removed to be appointed by the Company and the Trustee, or by the Trustee alone, as hereinbefore in this Section 8.11 provided.

The provisions of the second and third paragraphs of Section 6.01 and the provisions of Section 6.07, which have been made specifically applicable to the Trustee, shall also apply to any co-trustee or separate trustee appointed pursuant to this Section 8.11.

ARTICLE NINE

CONCERNING THE HOLDERS OF TRUST CERTIFICATES

SECTION 9.01. *Evidence of Action Taken by Holders of Trust Certificates.* Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

SECTION 9.02. *Proof of Execution of Instruments and of Holding of Trust Certificates.* Subject to the provisions of Section 8.02, proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the United States of America authorized to take acknowledgments of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, by an affidavit of a witness to such execution sworn to before any such notary or other such officer, or a guarantee of the signature of such person by a member of the New York Stock Exchange, or in any other manner the Trustee shall deem sufficient.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a certificate of the registrar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 9.02 as it shall deem necessary.

SECTION 9.03. *Trust Certificates Owned by Company Deemed Not Outstanding.* In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by any Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

SECTION 9.04. *Right of Revocation of Action Taken.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action, any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificate and of any Trust Certificate issued in exchange or substitution therefor,

irrespective of whether or not any notation in regard thereto is made upon such Trust Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE TEN

SUPPLEMENTAL AGREEMENTS

SECTION 10.01. *Supplemental Agreements without Consent of Holders.* Without the consent of the holders of any Trust Certificates, the Company, when authorized by a resolution of its Board of Directors, and the Trustee, at any time and from time to time, may enter into one or more agreements supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

(1) to evidence the succession of another corporation to the Company, and the assumption by any such successor of the covenants of the Company herein and in its guaranty in respect of the Trust Certificates contained, all as provided in Section 5.09 hereof; or

(2) to add to the covenants of the Company, for the benefit of the holders of the Trust Certificates, or to surrender any right or power herein conferred upon the Company; or

(3) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Agreement which shall not be inconsistent with the provisions of this Agreement, *provided* such action shall not adversely affect the interests of the holders of the Trust Certificates.

The Trustee is hereby authorized to join with the Company in the execution of any supplemental agreement authorized or permitted by the terms of this Agreement and to make any further appropriate agreements and stipulations which may be therein contained, but the Trustee shall not be obligated to enter into any such supplemental agreement which affects the Trustee's own rights, duties or immunities under this Agreement or otherwise.

A supplemental agreement authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the holders of any of the Trust Certificates at the time outstanding, notwithstanding any of the provisions of Section 10.02.

SECTION 10.02. *Supplemental Agreements with Consent of Holders.* With the consent (evidenced as provided in Section 9.01 of the holders of not less than 66⅔% in aggregate principal amount of the Trust Certificates at the time outstanding, the Company, when authorized by a resolution of its Board of Directors, and the Trustee may from time to time and at any time enter into an agreement or agreements supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or of any supplemental agreement or modifying in any manner the rights and obligations of the holders of the Trust Certificates and of the Company; *provided, however*, that no such supplemental agreement shall, without the consent of the holder of each outstanding Trust Certificate affected thereby,

(1) change the maturity of the principal of, or any instalment of interest on, any Trust Certificate, or change the dates upon which rentals are payable with respect to such principal at maturity or any instalment of interest or reduce the principal amount thereof or the interest thereon or any rentals payable with respect to such principal or interest or any optional prepayment, or change the coin or currency in which any Trust Certificate or the interest thereon or any rentals relating thereto is payable, or impair the right to institute suit for the enforcement of such payment on or after the fixed maturity or date of payment thereof; or

(2) modify any of the provisions of the guaranty of the Company in respect of any Trust Certificates; or

(3) create any security interest with respect to the Trust Equipment ranking prior to, or on a parity with, the security interest created by this Agreement or deprive any holder of the benefit of the security interest created by this Agreement in all or any part of the Trust Equipment; or

(4) reduce the percentage in principal amount of the outstanding Trust Certificates, the consent of whose holders is required for any such supplemental agreement, or the consent of whose holders is required for

any waiver (or compliance with certain provisions of this Agreement or certain defaults hereunder and their consequences) provided for in this Agreement; or

(5) modify any of the provisions of this Section 10.02, or Section 10.03, except to increase any such percentage or to provide that certain other provisions of this Agreement cannot be modified or waived without the consent of the holder of each Trust Certificate affected thereby.

Upon the request of the Company, accompanied by a copy of a resolution of its Board of Directors certified by the Secretary or an Assistant Secretary of the Company authorizing the execution of any such supplemental agreement, and upon the filing with the Trustee of evidence of the consent of the holders as aforesaid, the Trustee shall join with the Company in the execution of such supplemental agreement unless such supplemental agreement affects the Trustee's own rights, duties or immunities under this Agreement or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental agreement.

It shall not be necessary for the consent of the holders under this Section 10.02 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 10.03. *Effect of Supplemental Agreements.* Upon the execution of any supplemental agreement pursuant to the provisions of this Article Ten, this Agreement shall be deemed to be modified and amended in accordance therewith and the respective rights, limitations of rights, obligations, duties and immunities under this Agreement of the Trustee, the Company and the holders of Trust Certificate shall thereafter be determined, exercised and enforced hereunder subject in all respect to such modifications and amendments, and all the terms and conditions of any such supplemental agreement shall be and be deemed to be part of the terms and conditions of this Agreement for any and all purposes.

SECTION 10.04. *Reference in Trust Certificates to Supplemental Agreements.* Trust Certificates issued and delivered after the execution of any supplemental agreement pursuant to the provisions of this Article Ten, may

bear a notation in form approved by the Trustee as to any matter provided for in such supplemental agreement; and, in such case, suitable notation may be made upon outstanding Trust Certificates after proper presentation and demand. If the Trustee shall so determine, new Trust Certificates so modified to conform, in the opinion of the Trustee and the Board of Directors of the Company, to any modification of this Agreement contained in any such supplemental agreement may be prepared by the Trustee and executed by the Trustee, and the Company shall place its guaranty thereon and such new Trust Certificates may be delivered in exchange for the Trust Certificates then outstanding, without cost to the holders thereof, upon surrender of such Trust Certificates.

SECTION 10.05. *Opinion of Counsel to the Trustee.* The Trustee, subject to the provisions of Section 8.02, may receive an Opinion of Counsel as conclusive evidence that any supplemental agreement executed pursuant to this Article Ten is authorized or permitted by the terms of this Agreement and that it is not inconsistent herewith.

ARTICLE ELEVEN

MISCELLANEOUS

SECTION 11.01. *Rights Confined to Parties and Holders.* Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm, or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

SECTION 11.02. *No Recourse.* No recourse under any obligation, covenant or agreement of this Agreement, or of the guaranty endorsed on any Trust Certificate, shall be had against any stockholder, officer or director of the Company, as such, by the enforcement of any assessment or by any legal or equitable proceeding, by virtue of any statute or otherwise; it being expressly agreed and understood that this Agreement and said guaranty are solely corporate obligations, and that no personal liability whatever shall

attach to or be incurred by the stockholders, officers or directors of the Company, as such, or any of them, under or by reason of any of the obligations, covenants or agreements contained in this Agreement or in said guaranty, or implied therefrom, and that any and all personal liability, either at common law or in equity, or by statute or constitution, of every such stockholder, officer or director is hereby expressly waived as a condition of and consideration for the execution of this Agreement and said guaranty.

SECTION 11.03. *Officers' Certificates and Opinions of Counsel; Statements to Be Contained Therein.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Agreement (other than the issuance of Trust Certificates), the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Agreement and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Agreement shall include (a) a statement that the person making such certificate or opinion has read such condition or covenant; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and (d) a statement as to whether or not in the opinion of such person, such condition or covenant has been complied with.

SECTION 11.04. *Binding Upon Assigns.* Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

SECTION 11.05. *Notices.* All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed by registered mail to (a) in the case of the

Company, 111 West Jackson Boulevard, Chicago, Illinois 60604, or such other address as may hereafter be furnished to the Trustee in writing by the Company and (b) in the case of the Trustee, Corporate Trust Division, One First National Plaza, Chicago, Illinois 60670 or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

SECTION 11.06. *Effect of Headings.* The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

SECTION 11.07. *Counterparts.* This Agreement has been simultaneously executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

SECTION 11.08. *Date Executed.* This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

SECTION 11.09. *Governing Law.* The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Illinois. The Company, being a body corporate, hereby agrees that The Limitation of Civil Rights Act of the Province of Saskatchewan, and amendments thereto, shall have no application to this Agreement or any extensions or renewals thereof, or to any agreement collateral thereto, or to the rights, powers or remedies of the Trustee or any other person under this Agreement, or any extension or renewal hereof, or any agreement collateral hereto.

IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first written.

THE FIRST NATIONAL BANK OF CHICAGO

Trustee,

[CORPORATE SEAL]

by

Vice President.

Attest:

[Signature]

Trust Officer.

UNION TANK CAR COMPANY,

[CORPORATE SEAL]

by

Treasurer.

Attest:

W. B. Moore

Assistant Secretary.

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 3rd day of April, 1974, before me personally appeared J. R. GRIMES, to me personally known, who, being by me duly sworn, says that he is a Vice President of the First National Bank of Chicago, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Jacquelyn A Mohr
Notary Public

My commission expires ~~My Commission Expires May 10, 1975~~

[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 3rd day of April, 1974, before me personally appeared P. J. JOHNSON, to me personally known, who, being by me duly sworn, says that he is the Treasurer of UNION TANK CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Helen Jay Krug
Notary Public

My commission expires ~~My Commission Expires July 10, 1976~~

[NOTARIAL SEAL]

SCHEDULE A

Description of Trust Equipment		
<u>Number of Units</u>	<u>Description</u>	<u>Road Numbers* From-Through (Inclusive)</u>
300	70 ton bulkhead flat cars	16150-16337
		16344
		16350-16377
		16379-16385
		16387-16389
		16410-16411
		16413-16414
		16416
		16423-16424
		16426-16427
		16435-16437
		16445-16446
		16449-16450
		16452-16453
		16464-16465
		16477-16479
		16483-16484
		16486
		16490-16491
		16496-16498
		16503
		16515-16518
		16520
		16529-16541
		16546
		16548-16549
		16552
		16559-16563
		16565-16569
		16571-16576
		16650-16652

* All of the above Trust Equipment is lettered BCIT.